UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
NOV 2 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

ROBERT MOORE PETITIONER Vs. UNITED STATES OF AMERICA RESPONDANT	)	Case No.CR 88-0936-t '07 CV 2108 H Motion for Correction or Reduction of Sentence of Judgement. Under Title 18 U.S.C.3582(c)(2)

Procedural History

Petitioner before the court, on september 25, 1989 was sentenced by the Honorable Howard B. Turentine, which defendant reveived 300 months by the Court, which the calculated a level 36 (see exhibit 3&4) of the sentencing transcript.

Legal Argument

The defendant calculates what Congress and the U.S sentencing commission proposed crack guidelines new amendment, the defendant would be under the amount of 500 grams by the government on our calculation (see exhibit 4&8) sentencing hearing transcript.

Next Legal Argument

Is that 18 U.S.C Section (c) (2) gives the district court the discretion to reduce a sentence whenever a guideline range has been subsequently low by the sentencing commission.

Honorable Judge, You do have the flexibility with the new amendment which gives you the power to resentence me. The petitioner in this above case is asking the court to grant this motion for immediate release based on the new crack cocaine amendment. And the fact the petitioner has served 90 percent of his 300 month sentence that was imposed on him.

Two Argument

The petitioner is in fact a model inmate in the prison. (see exhibit #2 & 3) Chronological disciplinary record. Also (see exhibit #5) petitioner education transcripts while in prison.

Conclusion

For all the foregoing reasons, petitioner humbly request that this Honorable court grant his motion for immediate release.

Date: Nov, 3,2007

Robert James Moore #15878-198

Exhibit 4 Sentencing Transcript

it's under 500 grams, it's a 34, and if it's 500 or over, it's a 36?

MR. LASATER: Yes, your Honor. The only disagreement is what's attributable to Mr. Moore.

THE COURT: Okay. But, we have the two bases to start from -- your contention and your contention. Very well -- proceed, Counsel.

MR. BROOKLIER: Perhaps, I should start there then, your Honor, since the Court asked that question. This is less than 500 grams by the Government's own calculations. It's clearly a criminal 34 category. I would suggest -- and I would have suggested -- if the Government wants to stick Mr. Moore with more than he pleads to, that should have been done by a trial. We should have had a trial.

You know, your Honor, when Mr. Moore was first indicted, when he voluntarily surrendered himself to the jurisdiction of this court -- he was out at sea someplace. He didn't have to come back. When he came back here in November, your Honor, that was -- count seven was the charge he was facing -- that hand-to-hand delivery. And, we go through months and months of pre-trial preparation, and the Government, on the very day of trial -- and I mean this in no demeaning way to Mr. Lasater, who has been a perfect gentlemen and a fine advocate for the Government -- on the day of trial drops the 848. That has to mean something. It

EXHIBIT 3 SENTENCING TRASCRIPT

count two. So, that's why I say that I don't think there is a basis for going to 36, as counsel does and the Probation Office does. That was one of the reasons we pled to -- that this case resolved itself, was because we limited the object of the conspiracy to the substantive count in count seven.

I think it would be unfair, your Honor, to hold Mr. Moore responsible for all -- for the entire -- all of the overt acts, et cetera, et cetera, in the conspiracy count when that was not his intention, as testified on the record.

THE COURT: Counsel, I've read and considered the presentence report -- this, and of course, your argument, and I've read the matters that you filed in support of your position here this morning. I believe, under the guidelines, I'm entitled to take into consideration the overall amount of drugs involved. I, therefore, will find that this case is a category 36.

I have some disagreement with the Probation Office at this point on the state of the record as to whether the Defendant is classified as a four or a three, and I will reduce that from a four to a three -- there's no question in my mind that the Defendant was a manager or a supervisor, but not an organizer or leader. He may have been, but I think it's very clear that at least, he was a manager or supervisor. So, that will increase the matter from 36 to

EXHIBIT 3#

39. He gets a credit of two for acknowledging his responsibility, which puts him at 37.

Then, we go to the criminal history. The Government puts him at nine, which would put him at class four. Where's my chart?

(Pause.)

MR. BROOKLIER: Does your Honor wish the sentencing table?

THE COURT: I have it here. It's just a question of finding it. Let's see, we've got 36, 34, 37 -- and I would think he would fit in as to not a class four, but a class three, which the sentence range is from 262 to 327 months. That's the way I calculate it.

Be that as it may, the Court has read and considered the presentence report, considered the nature and circumstances of the offense, and the history and characteristics of the Defendant. I find the guidelines -- computed in the manner and method which I did, of 262 to 327 months. Therefore, pursuant to the Sentencing Reform Act of 1984, it's the judgment of the Court that the Defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 300 months. Upon release from imprisonment, the Defendant shall be placed on supervised release for a period of five years. The Defendant shall abide by the standard conditions of supervised release and

Exhibit 8th

Just a couple of other comments, your Honor -- I'd like to cite one case to the Court that I think is going to be a very important case in terms of the guidelines and their application. It really comes down to the real versus charged offense sort of theory. There's a case in the Western District of Tennessee -- it's called United States versus Smith, and it's at 686 F.Supp. 1246. The court in that case stated -- and I'm going to quote,

"The conduct necessary to support inclusion in the base offense level must be established by a finding of the jury, a plea of guilty confirmed by a finding of guilty in open court, or a stipulated offense other than the offense of the conviction."

Now, what that means, your Honor, is this. This is what I think it means -- that the Government can't agree to a stipulated basis, or a factual basis, on June 7, 1988 -- the date of Mr. Moore's plea -- and then, come in here four months later, as if they've convicted him of the 848. They didn't. That's why we have juries, that's why we have courts.

Lastly, your Honor, I think there are some things that need to be stricken from the presentence report. I'm not going to go through the Prosecution version because that's their allegation, and I know that the Court accepts it that way. But, in terms of -- starting on page 21, to be

VIMF2 * INMATE DISCIPLINE DATA * 03-17-2005
PAGE 001 * CHRONOLOGICAL DISCIPLINARY RECORD * 07:34:15

REGISTER NO: 15878-198 NAME..: MOORE, ROBERT JAMES
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ___ MOS PRIOR TO 03-17-2005

REPORT NUMBER/STATUS.: 990999 - SANCTIONED INCIDENT DATE/TIME: 05-11-2002 0814
DHO HEARING DATE/TIME: 05-21-2002 1720
FACL/CHAIRPERSON.....: VIM/T. MCGEE
REPORT REMARKS.......: COMMITTED PROHIBITED ACT CODE 397. SANCTION PER 5270.07. ADMITTED USING INMATE SUTTLES #04268-031'S PIN#.
397 PHONE ABUSE, NON-CRIMINAL - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: ADMITTED USING INMATE SUTTLES #04268-031'S PIN # TO MAKE TELEPHONE CALLS.
LP PHONE / 30 DAYS / CS
COMP: LAW: LOSS OF PHONE AND COMMISSARY TILL 06-19-2002.

REPORT NUMBER/STATUS.: 829766 - SANCTIONED INCIDENT DATE/TIME: 10-29-2000 2033
DHO HEARING DATE/TIME: 11-29-2000 0923
FACL/CHAIRPERSON.....: VIM/T. MCGEE
REPORT REMARKS.......: INMATE COMMITTED PROHIBITED CODE 406 & SANCTIONED IN COM COMPLIANCE WITH P.S. 5270.07 INMATE DISCIPLINE AND SHU
406 USING PHONE OR MAIL W/O AUTH - FREQ: 2
EXTRA DUTY / 10 HOURS / CS
COMP: LAW: INMATE TO PERFORM 10 HOURS OF EXTRA DUTY BEFORE COMPLETION DATE OF 12/13/00

REPORT NUMBER/STATUS.: 827227 - SANCTIONED INCIDENT DATE/TIME: 10-26-2000 0900
DHO HEARING DATE/TIME: 11-20-2000 1420
FACL/CHAIRPERSON.....: VIM/T. MCGEE
REPORT REMARKS.......: 297 CODE REDUCED TO PROHIBITED CODE 406. VIOLATION COMM-ITTED PRIOR TO 11-06-2000.
406 USING PHONE OR MAIL W/O AUTH - FREQ: 1
EXTRA DUTY / 20 HOURS / CS
COMP: LAW: INMATE MUST COMPLETE 20 HOURS EXTRA DUTY BY 12-04-2000.

REPORT NUMBER/STATUS.: 814230 - SANCTIONED INCIDENT DATE/TIME: 09-09-2000 1430
UDC HEARING DATE/TIME: 09-13-2000 2030
FACL/UDC/CHAIRPERSON.: VIM/E/F/T.A.JONES
REPORT REMARKS.......: INMATE ADMITTED TO MAKING INAPPROPRIATE COMMENT TO STAFF
312 BEING INSOLENT TO STAFF MEMBER - FREQ: 1
EXTRA DUTY / 8 HOURS / CS
COMP: LAW: 8 HOURS EXTRA DUTY TO BE PERFORMED 9/17/00
LP PHONE / 30 DAYS / CS / SUSPENDED 180 DAYS
COMP: LAW: 30 DAY PHONE RESTRICTION SUSPENDED PENDING CLEAR CONDUCT FOR 180 DAYS

G0002 MORE PAGES TO FOLLOW . . .

EXHibit #2

REGISTER NO: 15878-198 NAME..: MOORE, ROBERT JAMES
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ___ MOS PRIOR TO 03-17-2005

REPORT NUMBER/STATUS.: 507085 - SANCTIONED INCIDENT DATE/TIME: 07-05-1997 1842
UDC HEARING DATE/TIME: 07-08-1997 1359
FACL/UDC/CHAIRPERSON.: FLP/E/PEEK
REPORT REMARKS.......: TELEPHONE RESTRICTION FOR 45 DAYS
406 USING PHONE OR MAIL W/O AUTH - FREQ: 1
LOSE PRIV / 45 DAYS / CS
COMP: LAW: TELEPHONE RESTRICTION FOR 45 DAYS

REPORT NUMBER/STATUS.: 246495 - SANCTIONED INCIDENT DATE/TIME: 08-04-1994 0750
UDC HEARING DATE/TIME: 08-08-1994 1500
FACL/UDC/CHAIRPERSON.: PHX/PIMA/SHAW, F
REPORT REMARKS.......: COMMISSARY RESTRICTION (SUSPENDED)
327 CONTACTING PUBLIC WITHOUT AUTH - FREQ: 1
LOSE PRIV / 60 DAYS / CS / SUSPENDED 180 DAYS
COMP: LAW: COMMISSARY

REPORT NUMBER/STATUS.: 62982 - SANCTIONED INCIDENT DATE/TIME: 01-13-1992 1210
DHO HEARING DATE/TIME: 01-28-1992 0903
FACL/CHAIRPERSON.....: PET/TARLETON H
REPORT REMARKS.......: STAFF REP E. JACKSON, CODES 203 AND 298 WERE EXPUNGED FROM REPORT
307 REFUSING TO OBEY AN ORDER - FREQ: 1
DS / 15 DAYS / CS / SUSPENDED 90 DAYS
COMP: LAW: RELEASE TO POPULATION PROVIDING BED SPACE IS AVAILABLE
LOSE PRIV / 90 DAYS / CS
COMP: LAW: LOSS OF COMMISSARY EXCEPT FOR STAMP PURCHASES

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

Exhibit #5

Exhibit 5

VIMF2 *
PAGE 001 OF 001 *

INMATE EDUCATION DATA
TRANSCRIPT

* 03-17-2005
* 07:34:07

REGISTER NO: 15878-198
FORMAT......: TRANSCRIPT

NAME..: MOORE
RSP OF: VIM-VICTORVILLE MED I FCI

FUNC: PRT

---------------------------- EDUCATION INFORMATION ----------------------------

FACL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
VIM	ESL HAS	ENGLISH PROFICIENT	07-31-1991 0830	CURRENT
VIM	GED HAS	COMPLETED GED OR HS DIPLOMA	06-01-1991 0712	CURRENT

---------------------------- EDUCATION COURSES ----------------------------

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
VIM	RPP FCI PRISON 2 PAYCHECK (C6)	04-26-2004	07-21-2004	C	C	P	0
VIM	FILM STUDY COURSE	10-26-2003	01-16-2004	P	C	P	24
BMP	SEWING VT: M-F 12:30P-3:30PM	07-16-1999	08-13-1999	P	C	E	60
PHX	VCR REPAIR	05-23-1994	07-26-1994	P	C	M	240
PET	GED PM	03-17-1991	05-03-1991	P	W	I	105
PET	ABE MATH PM	01-28-1990	03-17-1991	C	W	I	40
PET	ABE ENGLISH PM	01-28-1990	03-17-1991	P	C	P	40
PET	ABE READING PM	01-28-1990	03-17-1991	C	W	I	40
PET	WELDING VT RELATED TRNG	10-01-1990	12-16-1990	P	C	E	25
PET	WELDING VT AM MAIN INST	10-01-1990	12-16-1990	P	C	M	200
PET	WELDING VT RELATED TRNG	04-24-1990	09-30-1990	P	C	E	50
PET	WELDING VT AM MAIN INST	04-24-1990	09-30-1990	P	C	M	336
PET	WELDING EXPLORATORY TRNG	04-10-1990	04-24-1990	P	C	E	80

G0000 TRANSACTION SUCCESSFULLY COMPLETED

3

Certificate of Service

Petitioner hereby Certifies that a true and correct copy of the foregoing motion has been sent postage paid by regular U.S. mail to the following address:

TO Clerk of the Court Southern
District of California
UNITED STATES DISTRICT COURT U.S. CLERK
880 Front Street
San Diego, Ca 92101-8900

Date Nov 3, 2007

Robert Moore #15878-198
in pro se
El Reno F.C.I.
P.O.BOX 1500
El Reno, OK 73036

JS44
(Rev. 07/89)

CIVIL COVER SHEET

FILED
NOV 2 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Robert Moore

DEFENDANTS

United States of America

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **Canadian, OK**
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Moore
15578-198
PO Box 1500
El Reno, OK 73036

ATTORNEYS (IF KNOWN) '07 CV 2108 H

U.S. Attorney

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

18 U.S.C. 3582

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE 88cr2108-H Docket Number

DATE November 2, 2007 SIGNATURE OF ATTORNEY OF RECORD